

CALIFORNIA COASTAL COMMISSION

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Staff: Meg Vaughn-LB
Staff Report: 6/22/06
Hearing Date: 7/12-14/2006
Commission Action:

W15c

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-05-479

APPLICANT: Donald Goodell

AGENT: Douglas Goodell & Stuart Goodell

PROJECT LOCATION: Near the intersection of Bolsa Chica Street and Los Patos (APN 110-014-20), in unincorporated Orange County.

PROJECT DESCRIPTION: Plant four trees (two western sycamores, two Catalina cherries), and two shrubs (two toyon) to replace the loss of a Monterey pine tree, a portion of a second pine tree, and an ornamental tree.

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending the Commission **approve** the proposed project subject to three special conditions which are necessary to assure that the project conforms with Section 30240 of the Coastal Act regarding protection of environmentally sensitive habitat areas.

Special Condition No. 1 requires submittal of a Landscape Maintenance Plan consistent with the standards contained in the project's Biologic Assessment. Special Condition No. 2 requires the commencement of development in a specified time frame. And Special Condition No. 3 requires any changes to the approved final plan require approval be reported to the Executive Director, and may require approval of the Commission.

LOCAL APPROVALS RECEIVED: None

SUBSTANTIVE FILE DOCUMENTS: Biological Assessment, Goodell Property, Bolsa Chica Mesa, Orange County, California, prepared by LSA, dated March 2006.

I. APPROVAL WITH CONDITIONS

STAFF RECOMMENDATION:

Staff recommends that the Commission **APPROVE** the permit application as conditioned.

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-05-479 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and Conditions of the permit.

5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. **SPECIAL CONDITIONS:**

1. **Landscape Maintenance Plan**

- A. **Prior to issuance of the coastal development permit and within 60 days of the date of Commission action on this permit**, the applicant shall submit for the review and approval of the Executive Director a Landscape Maintenance Plan that incorporates the requirements of the Biological Assessment prepared for the Goodell Property, Bolsa Chica Mesa, Orange County, prepared by LSA, and dated March 2006, as outlined on page 14 of the LSA report.
- B. The Landscape Maintenance Plan shall include, subject to review and approval of the Executive Director, a site plan that clearing depicts the location of the plantings.
- C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. **Commencement of Development**

The applicant shall commence the development approved by this permit no later than sixty (60) days from issuance of the coastal development permit by the Executive Director, unless the Executive Director grants an extension of this deadline for good cause.

3. **Changes to Approved Plan**

Any changes to the approved final plans and/or any cessation of work prior to completion shall be reported to the Executive Director. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth herein. Any deviation from the approved plans must be reviewed and approved by the Executive Director and may require Commission approval.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Project Description & Location

The applicant proposes to plant four trees (two western sycamores and two Catalina cherries), and two shrubs (both toyon) to replace the loss of a Monterey pine tree, a portion of a second pine tree, and an ornamental tree, in unincorporated area of Orange County near the intersection of Bolsa Chica Street and Los Patos Avenue (APN 110-014-20). The applicant is proposing to plant the trees and shrubs to restore the habitat that was lost when the trees were removed without a valid coastal development permit.

The subject site is a 6.2 acre, largely undeveloped parcel within an unincorporated area of Orange County. The site is within the County's Bolsa Chica LCP segment. It is located between the area known as "Parkside" which is in the City of Huntington Beach, and the recently approved, though at this point undeveloped, Brightwater project site in the County. The East Garden Grove-Wintersburg County Flood Control Channel is located further to the south of the subject property. Also in close proximity to the site is the Bolsa Chica restoration area. (See exhibit A).

Removal of the two trees required approval of a coastal development permit, because the "removal or harvesting of major vegetation other than for agricultural purposes" is considered development under the Coastal Act definition (Section 30106). The trees that were removed are considered "major vegetation" because they were adult trees that provided habitat, perches, foraging opportunities and shelter for raptors and other wildlife. In addition, these trees are adjacent to recognized "Eucalyptus grove ESHA" (environmentally sensitive habitat area), and to the environmentally sensitive habitat areas and wetlands within the Bolsa Chica restoration area, and the removed trees served wildlife, particularly raptors, from these habitats. A pair of White-tailed kites are known to have nested in the felled Monterey pine. White-tailed kites are a California Department of Fish and Game Fully Protected status species. This application only includes planting of the new trees and shrubs, it does not propose the unpermitted removal of the Monterey pine and ornamental shrub.

B. Standard of Review

The subject site is located in an unincorporated area of Orange County. The County has divided its LCP areas into geographical segments. The subject site is located in the Bolsa Chica LCP segment. The Bolsa Chica LCP area has a long and controversial history. Despite a number of submittals by the County and a number of actions by the Commission, as well as more than one court action, no final LCP certification has occurred for this area. The Commission's most recent action on the LCP, approval subject to suggested modifications, was never accepted by the County and thus lapsed. Nevertheless, that most recent LCP action by the Commission provides guidance for development within the Bolsa Chica area.

The standard of review for coastal development permits in the Bolsa Chica LCP area remains the Chapter 3 policies of the Coastal.

C. Environmentally Sensitive Habitat Areas

Section 30240 of the Coastal Act states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Section 30240 of the Coastal Act limits the amount and types of development that may occur within and adjacent to an environmentally sensitive habitat area (ESHA). The Coastal Act defines environmentally sensitive area as “any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.”

At the southern edge of the subject site is a continuous grove of Eucalyptus trees, planted in the early 1900's. Although Eucalyptus trees are not native to the area, this grove serves a vital biological role in the wetland/upland ecosystem. The Eucalyptus grove totals approximately 20 acres. It is recognized by the Department of Fish and Game as an environmentally sensitive area and has been recognized by the Coastal Commission and the courts as an environmentally sensitive habitat area or ESHA, as defined by the Coastal Act. In addition, also in close proximity to the subject site, is the Bolsa Chica wetlands restoration area.

The trees that were removed constitute substantial vegetation that contributed significantly to the continuation and enhancement of the sensitive habitat that exists throughout the project vicinity. The removed trees were known roosting and nesting area for raptors (i.e. white-tailed kites). The white-tailed kite nested in the large Monterey pine that was removed. Additional special interest species detected in or adjacent to the project area within the last several years, include Cooper's hawk (*Accipiter cooperii*), northern harrier (*Circus cyaneus*), merlin (*Falco columbarius*), American peregrine falcon (*Falco peregrinus*), bald eagle (*Haliaeetus leucocephalus*), and Allen's hummingbird (*Selasphorus sasin*). In addition, California gnatcatcher (*Polioptila californica californica*) surveys conducted in the vicinity by the applicant's biological consultant during the 2005 nesting season determined that the focal area and nesting area of a coastal California gnatcatcher breeding territory was adjacent to the study area.

In order to address the loss that the unpermitted tree removal had on the habitat functions of the subject site, the applicant is proposing to restore the site by planting four new trees

and two new shrubs. Although only two existing trees and a significant portion of a third are known to have been removed, the proposal to establish four new trees and two new shrubs will aid in off-setting the interim loss of habitat that has occurred between the time the trees were removed and establishment of the new trees to the level of maturity attained by the lost trees. In addition, of the two trees that were removed at least one of the Monterey pines was significant in terms of providing roosting and nesting habitat. The Biological Assessment prepared for the site, states that a third tree believed to have been a Chinese fig, appears to have also been removed some years ago. However, photographs taken by Commission staff confirm that the fig was still standing on the site several days before the pine tree was removed. The Chinese fig was significant in that it fruited and flowered. The fruiting and flowering attracted smaller birds, which in turn served as prey for the raptors. The western sycamores (*Platanus racemosa*) are expected to provide similar roosting, perching, and potentially, nesting sites as did the Monterey pine. Likewise, the two Catalina cherry trees, which fruit and flower, are expected to attract smaller birds as the Chinese fig did.

The applicant's biological consultant LSA, in the biological assessment prepared for the project titled Biological Assessment Goodell Property, Bolsa Chica Mesa, Orange County, California and dated March 2006 (Biological Assessment), states: "The recommended increase in the number of trees and the enhanced species diversity are intended to replace the previously removed tree habitat and maintain or enhance the raptor and avian foraging, roosting, and breeding potential."

The Biological Assessment includes a description of the mitigation measures to be enacted to offset the loss of the trees. However, although it describes the location that the plantings are to occur ("southeast corner of the study area"), the planting location is not depicted on a site plan. In addition, although it discusses the need for a "landscape maintenance plan" and provides guidelines for the plan, such a plan has not yet been submitted. The guidelines for the Landscape Maintenance plan adequately address the factors required to assure success of the plantings. The guidelines include the number, type, and size of replacement plantings, and that the Plan will be subject to the review and approval of the Executive Director. It includes a five-year establishment plan, and success criterion, based on height of the plantings at 3 and 5 year intervals, and a requirement of 100% survival 120 days following installation and 100% survival in the fifth year, and standards to follow if 100% survival is not achieved. However, the Landscape Maintenance plan does not appear to be specifically proposed, rather it appears only to be a recommendation of the biological consultant. In order to assure that the loss of the trees are adequately off-set the standards outlined in the Landscape Maintenance Plan must be carried out. In addition, in order to assure that the trees are planted in the most appropriate area on site, a site plan reflecting the location of the plantings must be submitted. Therefore, as a condition of approval the applicant is required to submit a Landscape Maintenance Plan consistent with what is outlined in the Biological Assessment, and the applicant is also required to submit a site plan clearly depicting the location where the plantings will occur. Only as conditioned can the proposed development be found to be consistent with Section 30240 which requires that development in or adjacent to and ESHA be sited and designed to prevent impacts which

would significantly degrade those areas, and shall be compatible with the continuance of the habitat areas.

D. Unpermitted Development

Development has occurred on site without the required coastal development permit, including the removal of major vegetation consisting of trees used by white-tailed kites for nesting. The applicant is proposing the current development in order to replace habitat lost due to the unpermitted development on the site. However, this permit only authorizes the proposed restoration activity, not the unpermitted tree removal.

Although development has taken place prior to submission of this permit application, consideration of the permit application by the Commission has been based solely on the consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. Commission action on this permit does not constitute a waiver of any legal action with regard to the alleged unpermitted development, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

E. Local Coastal Program

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The segment of unincorporated Orange County has neither a certified LCP nor a certified Land Use Plan. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act. Approval of the project will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 of the Coastal Act.

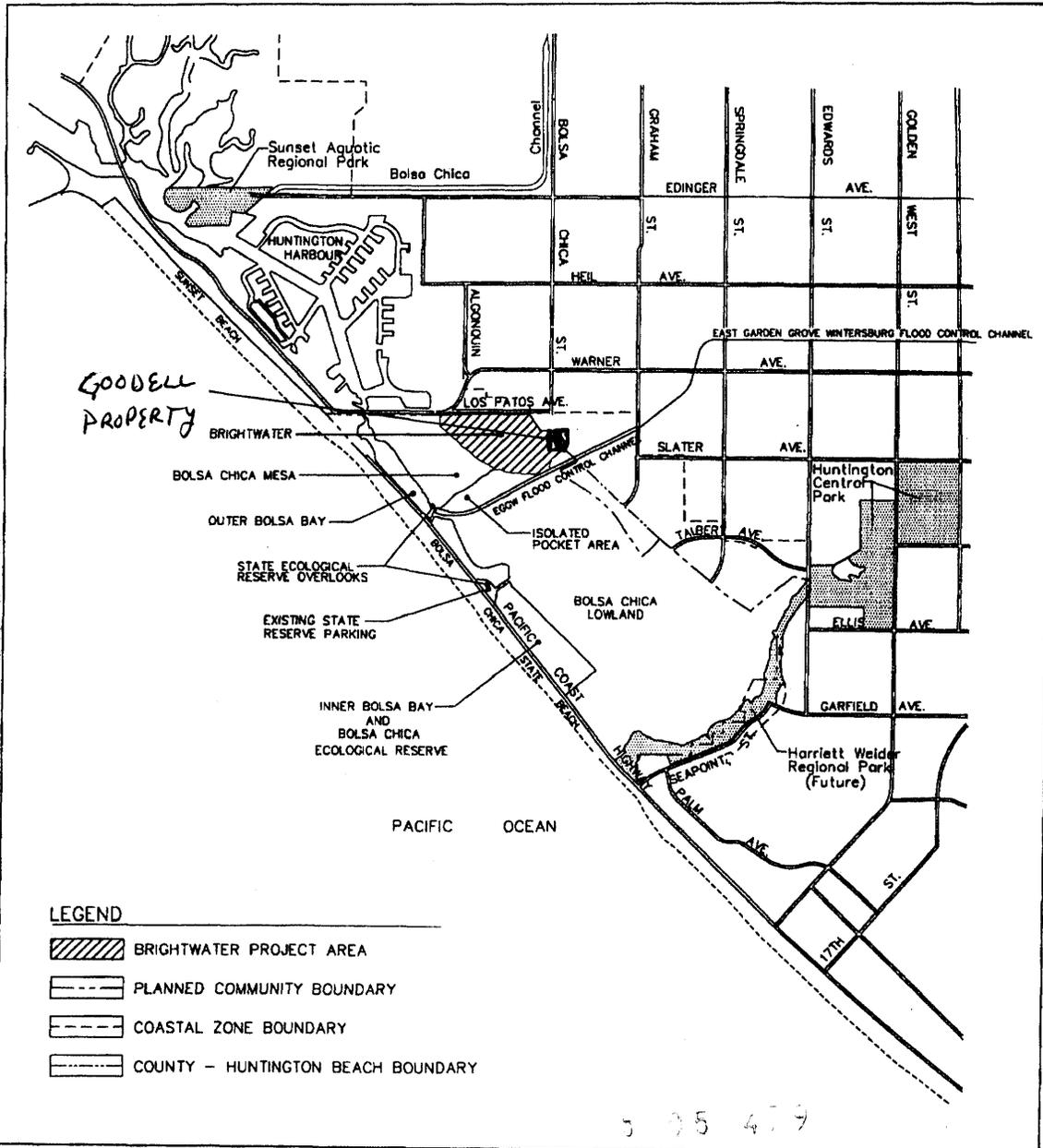
F. California Environmental Quality Act

Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project as conditioned has been found consistent with the biological resource policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the

Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

Vicinity Map.

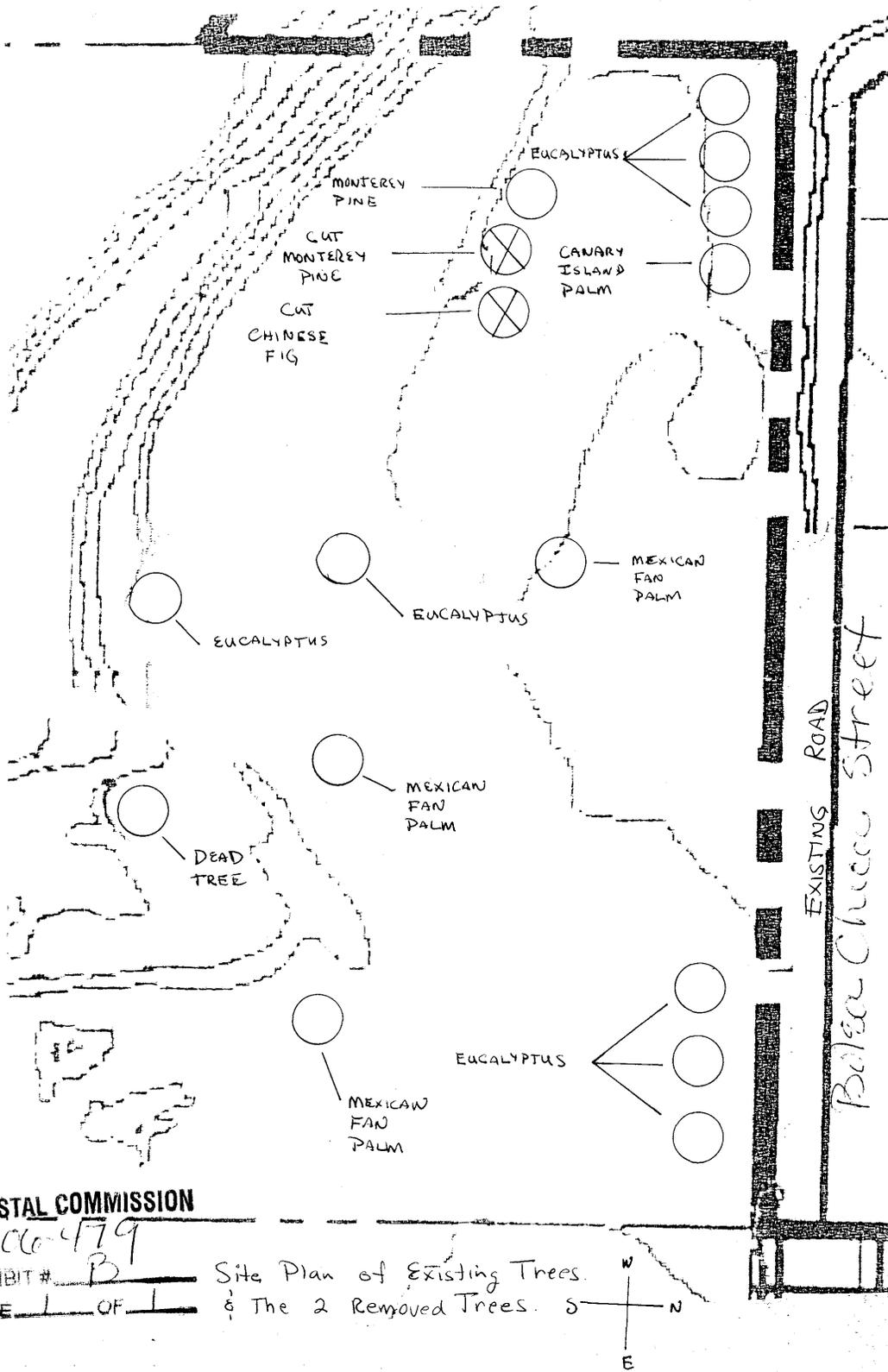


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EXHIBIT # A

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EXHIBIT # B

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Site Plan of Existing Trees
& The 2 Removed Trees.

